

REMARKS

INTRODUCTION

In accordance with the foregoing, claims 1, 2, 20, 35, 48, and 59 have been amended. Reconsideration of the allowability of the claims is respectfully requested.

Claims 1-35 and 37-63 are pending and under consideration.

REQUEST FOR WITHDRAWAL OF FINALITY

As noted above, the outstanding Office Action rejects a previously un-amended claim 48 based both a new interpretation of Kekic et al., U.S. Patent No. 6,664,978, and based on a new rejection rationale.

The previous Office Action set forth an interpretation of Kekic et al., indicating that Kekic et al. failed to disclose "one or more distributed gateways for monitoring said at least one network element, said one or more distributed gateways communicatively coupled to a central management system." See page 13 of the Office Action issued June 23, 2004.

Conversely, the outstanding Office Action now sets forth that Kekic et al. discloses the claimed central management system. See page 16, 2005.

Similarly, in the previous Office Action, Barrack et al., U.S. Patent No. 6,047,279, was relied upon to disclose the deficient "one or more distributed gateways for monitoring said at least one network element, said one or more distributed gateways communicatively coupled to a central management system," while the outstanding Office Action now only relies upon Barrack et al. to disclose "one or more distributed gateways for monitoring said at least one network element."

Likewise, the previous rejection rationale for modifying Kekic et al. to incorporate the interpreted distributed gateways and central management system of Barrack et al. was merely "to provide interface between the management system (user interface) and the devices being managed in order to communicate information about the devices being managed in a timely and efficient manner."

Conversely, the current rejection rationale for modifying Kekic et al. to incorporate both the interpreted distributed gateways is "for the purpose of providing the user with a system that

improves upon NMS (customized) 'legacy' network management system and operation support systems scalability when adding more elements as well as the flexibility when adding these element[s]. Which would significantly reduce costs and the human effort....Thus, Kekic provides the motivation to combine by utilizing a network management system as well as attempting to efficiently manage a constant changing network environment that includes heterogeneous elements."

Thus, the two rejection rationales are completely different.

The rationale behind permitting a second Office Action to be made final is that if the applicant has been given at least one opportunity to address the outstanding rejections, and if the Examiner is not persuaded by applicants arguments, the next Office Action can be made final. However, if applicant is successful in traversing the rejection and no substantive amendments have been made to the claims, then the next Office Action cannot be made final.

Here, apparently, applicants amendment to the other independent claims necessitated the Examiner to reinterpret Kekic et al. and revise the underlying motivational rationale for each obviousness rejection. However, by making the reinterpretations of Kekic et al. and changing the underlying motivational rationales the Office Action has also changed the same for previously un-amended claim 48, which is improper if the outstanding Office Action is to be made final.

Accordingly, it is respectfully submitted that the outstanding Office Action should not have been made final. Withdrawal of the finality of the outstanding Office Action is respectfully requested.

REJECTIONS UNDER 35 USC 102 AND 103

Claims 1, 23-25, 27-34, 59-60 and 62 stand rejected under 35 USC § 102(e) as being anticipated by Kekic et al., U.S. Patent No. 6,664,978, and claims 2-22, 26, 35, 37-58, 61 and 63 stand rejected under 35 USC § 103(a) as being obvious over Kekic et al. in view of Barrack et al., U.S. Patent No. 6,047,279. These rejections are respectfully traversed.

The Office Action indicates that Kekic et al. at least fails to disclose or suggest implementing the claimed at least one distributed polling gateway. Thus, such a distributed polling gateway aspect has been added to independent claims, thereby including the same in each independent claim, with differing scope and breadth. In addition, the independent claims have been amended to identify that the distributed polling gateway is located between the central management system and a claimed network element.

The obviousness rejection rationales are based on a proffered modification of Kekic et al. to include gateways, but only to provide a way of communicating between the central management system and the network element. Further, the rejections are based on the premise that the addition of a gateway to Kekic et al. would improve communication with network elements managed by Kekic et al. Ultimately, in Kekic et al., any polling operations on network elements are executed by the Office Action interpreted central management system.

Conversely, the independent claims set forth that the managing of the network element is executed at at least one distributed polling gateway. The independent claims further identify that the at least one distributed gateway is located between the central management system and the network element.

In addition to the Office Action's interpretation of Kekic et al. and addition of a gateway from Barrack et al., it is respectfully submitted that neither Kekic et al. nor Barrack et al. disclose the claimed gateway executing polling operations or managing network elements.

One aspect of the present invention is to provide a localized management system over network elements, while still providing a user interface to control/modify the localized management at the central management system. In addition, in another advantage of the present invention, dependent claim 6, for example, indicates that the gateway "filters" data for said central management system.

Neither Kekic et al. nor Barrack et al. disclose or suggest the claimed gateway, located between the central management system and the network element, executing polling operations for and/or managing of the network element.

Therefore, it is respectfully requested that these rejections based on Kekic et al. and Barrack et al. be withdrawn.

In addition, in response to applicants previous traversal indicating that the previous obviousness rejections were improper, as failing to provide evidenced motivation, the outstanding Office Action has elaborated within each rejection rationale the relied upon motivation. However, the recited elaboration of the underlying motivation only identifies what benefits the identified feature provides in the relied secondary reference, and how that feature could be incorporated into the general direction of Kekic et al., but this still does not meet a prima facie obviousness standard.

There must still be evidence in the record as to why this features would be needed or desired in Kekic et al., i.e., regardless of whether the modification of Kekic et al. could be made

or whether the same would benefit Kekic et al. There must be evidence in the record that one of ordinary skill in the art would have found such a benefit needed or desired in Kekic et al., i.e., if the addition of gateways is not needed in Kekic et al., or if there are no problems within the Kekic et al. system solved by the gateway, then it would not have been obvious to modify Kekic et al. to include the same.

For example, in rejecting claim 35, the Office Action sets forth that it would have been obvious to add automatic network management support from Barrack et al. to Kekic “for the purpose of providing the user with a system that improves upon NMS (customized) (legacy) network management system and operation support systems scalability when adding more elements as well as the flexibility when adding these elements. Which would significantly reduce cost and the human effort.” The Office Action then cites a portion of Barrack et al. supporting the same. However, this is merely a benefit of Barrack et al.

There is no evidence that Kekic suffers (or would suffer) from any problem solved by Barrack et al., or that Kekic et al. will need the system of Barrack et al.

To further support the rejection of claim 35, the Office Action further states that “Kekic provides the motivation to combine by utilizing a network management system as well as attempting to efficiently manage a constant changing network environment that includes heterogeneous elements,” which is merely an identification of the relevant art of Kekic et al.

The relevant art related to Kekic et al. is not conclusive of the obviousness of adding the feature of Barrack et al.

According to the outstanding obviousness rationale, it would have been obvious to add the related feature from Barrack et al. to any system that utilizes “a network management system as well as attempting to efficiently manage a constant changing network environment that includes heterogeneous elements,” which is not true or proper.

It is respectfully submitted that the outstanding rejections are still being based solely on the subjective believe of the Examiner that the modification of Kekic et al. would have been obvious, without any objective concrete evidence of the same in the record. The remaining obviousness rejections set forth similar rejection rationales, setting forth the benefit of the secondary reference feature without any objective concrete evidence in the record linking Kekic et al. to the need or desire of the same benefit.

Thus, it is respectfully submitted that the outstanding rejections fail to meet a prima facie obviousness case.

In addition, as noted previously, the present application background details, on pages 9 and 10, that there are typically strong reasons not to implement the Office Actions modification of a server/client management system to encompass management of distributed network elements or polling gateways, e.g., separate software code for each stand-alone NMS system may need to be written, installed, and maintained on each NMS, and that such implementations could increase processing requirements.

Thus, the only evidence in the record would appear to discourage such a modification of Kekic et al.

Accordingly, in addition to the outstanding Office Action failing to meet a prima facie obviousness case, it is respectfully submitted that it would not have been obvious to make the proffered modifications of Kekic et al. to disclose the presently claimed invention.

Therefore, for at least the above, it is respectfully submitted that claims 1-35 and 37-63 are patentably distinguishable over Kekic et al. and Barrack et al., alone or in combination. Withdrawal of the outstanding rejections is respectfully requested.

CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Respectfully submitted,

Date: March 31, 2005

By: 

Stephen T. Boughner
Registration No. 45,317